Hollander Home Fashion Corp. *and* Midwest Region, International Ladies' Garment Workers' Union, AFL-CIO and Local 1, United Industrial Workers, affiliated with the United Brick & Clay Workers of America, AFL-CIO, Party in Interest. Cases 13-CA-19618 and 13-CA-19793

April 20, 1981

DECISION AND ORDER

On December 30, 1980, Administrative Law Judge Arline Pacht issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions[1] and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt her recommended Order.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Hollander Home Fashion Corp., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

[2] Employee Zepeda is inadvertently referred to as "Sepeda" throughout the attached Decision. Also, the Administrative Law Judge inadvertently found that employee Chavez testified that employee Juarez told him that Plant Manager Osaky had provided the union authorization cards which Juarez and Zepeda were distributing, whereas the record shows that Chavez testified that Zepeda, not Juarez, told him that. However, this erroneous statement of the evidence has no effect on our ultimate decision herein.

[3] In agreeing with the Administrative Law Judge that Respondent's removal of the unlawfully imposed written warnings from the personnel files of the employees involved did not moot the matter or obviate the need for an appropriate remedy, we rely on *Georgia Hosiery Mills*, 207 NLRB 781 (1973), rather than on *Mister Softee of Indiana, Inc. and Curb Service of Indianapolis, Inc.*, 162 NLRB 354 (1966), relied upon by the Administrative Law Judge. We find *Mister Softee* to be inapposite.

[4] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the reimbursement due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge: These consolidated cases were heard in Chicago, Illinois, on October 6-8, 1980, pursuant to a charge in Case 13-CA-19618 filed on February 26, 1980, and amended on March 14, 1980, and a second charge in Case 13-CA-19793 filed on April 15 and amended on September 17, 1980. A complaint issued in Case 13-CA-19618 on April 18, was consolidated on May 29, 1980, with the complaint in Case 13-CA-19793, and amended on July 7 and September 17 and 26, 1980.

The amended and consolidated complaint alleges that Respondent violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended (the Act), by (1) inducing the employees to sign authorization cards on behalf of the United Industrial Workers (also referred to as the Union); (2) recognizing and entering into a collective-bargaining agreement with the Industrial Workers when it did not represent an uncoerced majority of Respondent's employees; and (3) permitting the Industrial Workers to meet with its employees on company premises during working time. The complaint also alleges that agents of Respondent conducted unlawful interviews of the employees and issued disciplinary notices to five employees for testifying in support of the General Counsel's petition for an injunction in Federal district court.[1] Respondent filed timely answers denying the commission of any unfair labor practices.

Upon the entire record, including my observation of the witnesses, and after due consideration of the competent briefs submitted by counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with its principal office and place of business in New Jersey, manufactures sleeping bags, pillows, and sleepwear. Respondent also owns and operates a plant at 4900 West Flourney Street, Chicago, Illinois (hereinafter the Chicago plant), selling and shipping from this facility in 1979, a representative year, goods and materials in excess of $50,000 directly to points outside Illinois. Accordingly, the General Counsel contends, Respondent concedes, and I find that Respondent is engaged in commerce within the meaning of the Act.

The United Industrial Workers and the Midwest Region, International Ladies' Garment Workers' Union, AFL-CIO (hereinafter the ILGWU),[2] are labor organizations within the meaning of Section 2(5) of the Act.

[1] Pursuant to the General Counsel's motion, on August 1, 1980, the Hon. Nicholas Bua of the U.S. District Court for the Northern District of Illinois issued a preliminary injunction ordering, *inter alia*, that Respondent withdraw recognition from, and cease giving force and effect to, the terms of the collective-bargaining agreement with the United Industrial Workers pending the disposition of the case by the National Labor Relations Board.

[2] Murray and Kotansky appeared on behalf of the Party in Interest at the hearing only on October 6.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Recognition of the United Industrial Workers*

In addition to its New Jersey factory, Respondent operates one plant in Chicago, the site of the instant dispute, and another in Los Angeles, where on October 16, 1979, the ILGWU was certified, after an election, as the bargaining representative for the production and maintenance employees.

The 50 to 60 employees at the Chicago facility were unrepresented by any labor organization until mid-November 1979, when within several hours two employees obtained signed authorization cards for the United Industrial Workers from virtually all of their fellow workers. The facts surrounding the card solicitations are in sharp dispute.

According to the Government's key witness, Salvador Juarez, he and Ramiro Sepeda were summoned to the office of Plant Manager Phillip Oskay who told them he wanted to have a union in the plant as a means of resolving wage raise differentials among the employees. Osaky then handed authorization cards printed in English to Juarez and Sepeda and directed them to distribute them to their coworkers, explaining only that the cards were for a union and that if the employees signed the cards they would receive a 5-cent-an-hour pay increase.

Juarez further testified that, immediately after the meeting with Osaky, they solicited signatures on the authorization cards from each of their fellow workers telling them that the cards were for a union and would bring about a 25-cent pay raise. Employee Israel Chavez corroborated Juarez' account, stating that Juarez told him that Osaky had provided the cards and promised a 25-cent raise if they were signed. Another employee, Teresa Gonzalez, also testified that Sepeda assured her that a 25-cent raise would be forthcoming if she signed the authorization card. Approximately an hour and a half later, Juarez and Sepeda returned 50 signed cards to Osaky.

A completely different version of the card solicitations was provided by the United Industrial Workers International vice president, Wayne Murray, and by Respondent's witnesses, Sepeda and Osaky.

Murray related that an employee at another plant represented by the Industrial Workers told him that employees at Hollander were interested in unionizing. Thereafter, he and the Industrial Workers business agent, John Kotansky, visited Respondent's facility toward the close of a business day in November 1979. Since neither he nor Kotansky spoke any Spanish, their efforts to communicate in English with the employees emerging from the plant were futile until they approached Ramiro Sepeda who appeared to understand a little English. They handed Sepeda some 100 authorization cards and requested his help in organizing the employees.

Murray further testified that Kotansky returned to the plant several days later with a bilingual companion and collected the authorization cards from Sepeda. Then, on November 16, he directed Kotansky to meet with Oskay and demand recognition. On November 16, Kotansky advised Murray that he had met with Osaky and obtained a signed recognition agreement. Murray then forwarded the agreement to the United Industrial Workers president in New Jersey.

Sepeda recalled that, on the day he first met Murray and Kotansky, he left the plant some 5 minutes ahead of the other employees. One of the two men waiting outside the factory conveyed to him in Spanish that they were union organizers and that the employees would obtain a 25-cent raise if they signed the cards which they left with him.

Sepeda then drove several coworkers home but failed to mention his encounter with the union organizers. Instead, that evening he spoke with a friend who advised him that unions were beneficial. On this advice, the next day he sought Juarez' assistance in distributing the cards. Upon telling the employees that they would receive a 25-cent raise, he and Juarez collected signed cards from all the employees present. Sepeda stated that he kept the signed cards in the trunk of his automobile and, when the same two union organizers returned several days later, turned the cards over to them.

Osaky's testimony offers a third perspective on these events. He asserted that he had no knowledge of any organizational activity in the plant until Kotansky and Murray entered his office on November 16. At that time, they presented him with the signed authorization cards and demanded that Respondent recognize the Industrial Workers immediately or else the workers were prepared to go out on strike. Osaky verified the signatures on the cards against company records and, when convinced of their authenticity, telephoned Respondent's president, Leo Hollander, in the Company's home office in New Jersey. After discussing the possibility of a strike during Respondent's busy season, Hollander instructed Osaky to sign the agreement recognizing the Industrial Workers as the exclusive bargaining representative for the employees at the Chicago plant.

B. *The Collective-Bargaining Agreement*

The collective-bargaining agreement was negotiated exclusively by Leo Hollander and the United Industrial Workers International president in New Jersey. The contract, which took effect on February 1, 1980, provided for an immediate 25-cent-an-hour across-the-board increase. It also contained a union-security clause requiring union membership for unit employees within 30 days of the date of employment conditioned on the payment of dues and initiation fees to be deducted from the employees' wages upon written authorization.

On February 8, 1980, a notice was posted in the plant announcing that $10 dues would be withheld from the employees' paychecks each month and that an initiation fee would be imposed on employees joining the Union after February 29, 1980. Thereafter, and until the preliminary injunction issued on August 1, Respondent deducted the monthly dues payments.

Also during the first part of February, and on one occasion in December,[3] Osaky met with a handful of employees who had not been working for Respondent in

[3] Employee Benjamin Torres testified that Osaky gave him a union authorization card to sign in December 1979, shortly after he returned from a vacation.

November. Osaky related that he provided authorization cards to each employee, advising them that, if they signed, they could avoid the Union's $25 initiation fee.

In early March 1980, Juarez testified that Osaky again instructed him and Sepeda to distribute another set of union cards to the employees so that the Union would have their correct names and addresses. This time, all but a few employees refused to sign the cards.

C. *The Advent of the ILGWU*

In February, the ILGWU began to campaign actively among Respondent's employees, holding several meetings at a hall away from the Company's premises. After learning that Osaky had directed Juarez and Sepeda to distribute cards for the United Industrial Workers, the ILGWU filed a representation petition with the Board. When the Board barred the petition by virtue of the extant contract between Respondent and the Industrial Workers, the ILGWU filed the initial charge in this case on February 26, 1980.

Approximately a month later, on March 23, a loudspeaker announcement instructed the employees to report to the plant's dining room. There, Murray and Kotansky, through the intercession of a translator, explained the terms of the collective-bargaining agreement to the employees and said they would try to resolve their problems.

D. *Interrogations*

Several days after the meeting described above, 25 to 35 employees were paged one at a time to go to Osaky's office where Charles Ellman, an industrial relations consultant, interviewed them through a translator, Ralph Carreno, as to the circumstances attending their signing of the Industrial Workers authorization cards in preparation for Respondent's defending against the charge filed by the ILGWU. Although some of the employees, including Elodia Martinez, Teresa Gonzalez, Israel Chavez, and Guadalupe Acosta, stated that Ellman identified himself as a Government representative, their testimony was uncertain. Thus, Martinez admitted that she found what was said at the interview confusing and did not understand it clearly, while Acosta indicated that neither man stated who had sent them. Chavez at one point stated that the interviewer claimed he was from the Government and, at another time, that he was there for the Company. Rafael Gutierrez added that the interviewer identified himself as an investigator for the Government, that a complaint was filed with the Government and he was there to investigate. The employees acknowledged that they were advised that their participation in the interviews was voluntary.

Ellman, whose testimony was corroborated by Carreno, explained that he told each employee that he, Ellman, represented the Company; that he was present to investigate charges filed with the Government by a union, that their statements were volitional, and that there would be no reprisals resulting from what they did or did not say. In fact, some six employees declined to be interviewed. During the interviews, both Ellman and Carreno took notes and advised the employees that their statements would be reduced to writing for their signatures. Chavez and Gonzalez contended that not everything they raised at the interview appeared on their signed statements.

E. *Disciplinary Warnings*

Subsequent to the issuance of the complaint in this case, the Board sought injunctive relief in Federal district court. Prior to the hearing scheduled for July 21, the General Counsel subpenaed five of Respondent's employees to appear as witnesses and on July 18 relayed their names to Respondent's counsel.[4]

Some 10 minutes before the start of the workday on July 21, the subpenaed employees informed Osaky that they had to leave for court. Osaky assented to their departure and at the same time released all the women employees for the day because a heavy rain the previous night had flooded the plant floor.

On the following day, July 22, Osaky directed Supervisor Elias Lubowicz to issue to each of the employee-witnesses warning notices which stated that their departures were without permission. Osaky told employee Chavez, later that same day, that the warnings were issued because the employees failed to give notice prior to going to court. At the hearing, Osaky added that, had he received advance notice, he could have hired substitutes to assist with the removal of material from the flooded plant floor.

Subsequently, on the advice of Respondent's counsel, the discipline slips were removed from the employees' files, but none of the five men involved was informed of this action.

F. *Analysis and Conclusions*

1. Unlawful assistance and support

The primary issue in this proceeding—whether Respondent unlawfully intervened in the organization of its employees and recognized the Union when it did not represent an uncoerced majority—turns, as is frequently the case, on questions of credibility. Here, differing descriptions of the same events given by witnesses for Respondent and the United Industrial Workers raise grave doubts as to the veracity of their individual and collective testimony.

Wayne Murray, International vice president of the Industrial Workers, and employee Ramiro Sepeda agreed only as to their meeting outside the plant sometime in November. Aside from that, there is no convergence of their statements. Murray claimed that he and Kotansky spoke no Spanish but, after vainly attempting to communicate with other employees emerging from the plant, fortuitously singled out Sepeda, the one employee with whom they could speak a little English. However, Sepeda alleged that he left the factory alone at least 5 minutes before other employees and was alone when he spoke with the union agents. Further, Sepeda denied that

[4] The record shows that subpenas were served to Chavez, Gutierrez, Juarez, and Martinez on July 8, to Torres on July 17, and to Juarez on July 18.

he spoke any English, claiming he conversed only in Spanish with the two men. Murray remembered that he asked for Sepeda's help in organizing the workers but said nothing about a pay raise. Sepeda recalled that Murray told him the Union would obtain a 25-cent wage increase. Murray further testified that Kotansky returned to the plant several days later with a bilingual aide, while Sepeda stated that the same men he met on the first occasion returned a second time to collect the signed authorization cards. Murray's and Sepeda's accounts of their meetings are so riddled with contradictions as to make it clear that the supposed meetings never occurred.

Apart from the conflicts outlined above, implausibilities in here in Respondent's and the Industrial Workers' version of events which simply do not accord with common experience in the labor relations arena. For example, it defies credulity to believe that the United Industrial Workers would allow its entire campaign to rest in the hands of one employee whose labor background and position in the Company were unknown to it and whose language its agents did not speak. Although Murray stated that he and Kotansky were barely able to communicate with Sepeda, speaking to him for no more than 5 to 10 minutes, they left him with 100 English-language authorization cards. That Murray would expect Sepeda to distribute cards printed in English without any explanation of their purpose serves to expose as fiction his and Sepeda's stories.

Sepeda's tale of meeting two strangers who handed him authorization cards and enlisted his aid in organizing the plant is equally incredible. After such an encounter, it is inconceivable that he would fail to comment to his coworkers either that same evening or the following morning. It is unbelievable that, on the bare assurance of a friend that unions were beneficial, he could convince all his fellow workers that an unknown union would deliver on its promise of a specified pay raise. No union could or would give such a promise unless, of course, it had struck a prior bargain with management.

In contrast to the implausible stories told by Murray and Sepeda, the account offered by Salvadore Juarez, confirmed in part by employees Chavez and Gonzalez, was consistent and logical.[5] Juarez' testimony that it was Osaky who gave him and Sepeda the authorization cards and promised the wage increases provides the only rational explanation for the employees' subsequent conduct. Surely, Spanish-speaking employees would not blindly sign cards printed in a language foreign to them unless they were convinced that a promise would be fulfilled and a benefit gained. A promise by their boss was far more likely to encourage the employees to sign the cards than a promise made by an unknown union. Further, it is unlikely that Juarez and Sepeda would be permitted to roam the plant floor soliciting signatures and interrupting employees at their stations during the workday without the knowledge and approval of the plant manager. Therefore, Osaky's protestations that he was unaware of any union activity prior to his November 16 meeting with representatives of the United Industrial Workers is unbelievable.

Indeed, virtually all of Osaky's testimony must be discounted. Although the record establishes that he did sign a recognition agreement on November 16, Osaky's reconstruction of his meeting with Kotansky and Murray on that date was unconvincing.[6] Osaky would have the Board believe that, after 12 years as a plant manager during which time he had daily telephone contacts with Respondent's president, he knew nothing of union activity in Respondent's other plants or in the one he controlled. Osaky posed as a powerless instrument of management and feigned ignorance of union matters. Yet, without first contacting Leo Hollander, Osaky verified the signatures on the cards against the employees' signatures on company records. On the basis of his card check and the purported threat of a strike, Osaky allegedly believed that immediate recognition of the Industrial Workers was necessary. If Osaky were the *pater familias* to his employees that he claimed to be, it is incredible that he entertained no doubts as to their purported intentions to strike. Even more incredible was his acceptance of the validity of the cards when he was well aware that the employees neither read nor spoke English.[7]

It follows from all of the above that, when Juarez and Sepeda distributed authorization cards for the United Industrial Workers, they were acting solely on the instructions of their boss, Osaky. In so doing, they were serving as agents for Respondent, which is accountable for their actions. *Tuschak/Jacobson, Inc. t/a Franklin Convalescent Center*, 223 NLRB 1298 (1976). By its extensive involvement in the solicitation of cards, accompanied by the promise of a wage raise and its precipitous recognition of the Industrial Workers, Respondent provided unlawful assistance and support to the Industrial Workers in violation of Section 8(a)(1) and (2) of the Act. *Hoover, Inc.*, 240 NLRB 593 (1979); *B.F.G. Gourmet Foods, Inc.*, 236 NLRB 489 (1978); *The Hartz Mountain Corporation*, 228 NLRB 492 (1977), enfd. *sub nom. District 65, Distributive Workers of America* v. *N.L.R.B.*, 593 F.2d 1155 (D.C. Cir. 1978); *Packerland Packaging Company of Texas, Inc., etc.*, 221 NLRB 1119 (1975), enfd. in relevant part 537 F.2d 1343 (5th Cir. 1975).

Respondent submits that speedy recognition of a union based on a card check is not in itself unlawful as long as the cards are valid. However, even were I to put aside my skepticism about Respondent's involvement in this case and its unusual alacrity in agreeing to a card check, I would still conclude that the cards did not reflect the employees' unhampered choice of a bargaining agent.

The Board has posited that employees' imperfect understanding of the nature of collective bargaining will not invalidate their signed authorization cards where the evidence as a whole indicates that the employees understood the purpose of the cards or where the distributors

[5] Respondent submits that Chavez was the only one to corroborate Juarez' testimony. In fact, Gonzalez also mentioned the promise of a 25-cent pay increase. Moreover, Respondent is in a poor position to criticize the lack of corroboration in the General Counsel's case when it failed to call a single employee-witness to support Sepeda's account.

[6] Contrary to Osaky's assertion that he met with both Murray and Kotansky, Murray testified that he did not accompany Kotansky to the plant on November 16.

[7] Leo Hollander's involvement in this charade is also evidenced by his rapid and unquestioning acceptance of the validity of the cards.

of the cards were fully and accurately briefed on their purpose and conveyed that purpose to the prospective signers. *Missouri Beef Packers, Inc.*, 197 NLRB 176, 187–188 (1972). Here it is undisputed that neither Juarez nor Sepeda could read the cards which were not translated for them. They certainly were not told anything about the collective-bargaining process. They were advised only that the cards were for a union and that, if signed, a 25-cent raise would be forthcoming. Therefore, this is all they could convey to their coworkers who were young, had little education, and had no prior experience with unions or collective bargaining. That the employees asked no questions about the Union during the lightning-quick organizational campaign suggests that their motivation in signing the cards was to obtain the promised wage increase.[8] Respondent's unseemly haste in granting recognition on the day after the cards were circulated left no time for the employees to reconsider their actions. Thus, unlike the employees in *Missouri Beef*, the Hollander employees signed cards which were totally unintelligible to them and did not knowingly designate the United Industrial Workers as their exclusive bargaining agent. See *Brancato Iron Works, Inc.*, 170 NLRB 75, 81–82 (1968). Therefore, in recognizing and entering into a collective-bargaining agreement with the Industrial Workers at a time when that Union did not represent an uncoerced majority of the employees, Respondent violated Section 8(a)(1) and (2) of the Act. *International Ladies' Garment Workers' Union, AFL-CIO [Bernhard-Altmann Texas Corp.]* v. *N.L.R.B.*, 366 U.S. 731 (1961); *The Hartz Mountain Corporation, supra* at 527. If signed cards do not represent an informed choice by the employees assuming an employer's good faith, they certainly are not reliable indicators of employee sentiment where, in a case such as this, there is evidence of the employer's assistance to and support of the union.

Because, as was found above, Respondent's relationship with the Industrial Workers was illicit from the outset, its subsequent course of dealings with the Union was tainted as well. Thus, the relatively expeditious execution of a contract which was negotiated without any involvement of the employees or assessment of their interests and needs merely represented another phase in Respondent's strategy to superimpose a compliant union on its unwitting workers.[9] See *Packerland Packing Company, supra; Hartz Mountain Corporation, supra.*

Similarly, Respondent's enforcement of the terms of the labor contract, particularly the union-security and dues-checkoff provisions, was the fruit of a relationship spoiled from the start. Osaky's excuse that he provided authorization cards to some employees in February 1980, after the contract was executed, solely to assist them in avoiding the Union's initiation fee is no defense given the unlawful nature of that agreement.[10] By maintaining the union-security clause and by automatically deducting dues from the employees' paychecks and remitting those funds to an assisted union which never represented an uncoerced majority of the employees, Respondent committed independent violations of Section 8(a)(1), (2), and (3) of the Act. *Triangle Sheet Metal Works Division of P & F Industries, Inc., et al.*, 237 NLRB 364 (1978); *Ravenswood Electronics Corporation*, 232 NLRB 609, 618 (1977).

Further, Respondent acted improperly in permitting the Union to meet with the employees on company premises during working hours on March 23, 1980. The Board has held that mere permission to a union to address employees on company time is not *per se* unlawful. However, such conduct has been found to violate Section 8(a)(2) of the Act where other unlawful assistance has occurred. *Jolog Sportswear, Inc. and Jonathan Logan, Inc.*, 128 NLRB 886 (1960), affd. *sub nom. Mary Kimbrell, et al.* v. *N.L.R.B.*, 290 F.2d 799 (4th Cir. 1961).

The collective-bargaining agreement in the instant case authorized such meetings on company premises. However, since the agreement was invalid, the meeting was simply another manifestation of Respondent's continuing assistance to the Union, and is proscribed under the Act. See *Margaret Anzalone, Inc.*, 242 NLRB 879 (1979); *Franklin Convalescent Center, supra.*

2. Lawful interrogation of employees

The General Counsel argues that the interviews conducted by Chuck Ellman on or about March 25, 1980, flouted the safeguards prescribed for permissible interrogations by *Johnnie's Poultry Co.*, 146 NLRB 770 (1964). There, the Board ruled that an employer may question its employees in preparing for hearing provided that participation was obtained on a voluntary basis, the purpose was communicated to the employees, assurances were given against reprisal, and there were no coercive circumstances.

In the instant case, I do not find that Ellman breached these standards. Ellman, and the interpreter who assisted him, Ralph Carrena, impressed me as candid witnesses. As a labor relations consultant, Ellman was well aware of the *Johnnie's Poultry* standards and apparently took care to observe them at the interviews. Carrena, a professional interpreter for many years, employed by an independent company which provides such services, had no ongoing relationship with Respondent and, therefore, no motive to fabricate. His testimony was consistent with Ellman's.

To credit Ellman and Carrena in this situation does not mean that the Government's witnesses were intentionally dissembling when they described their recollections of the interview. Three of the five witnesses testifying about this incident believed that Ellman identified himself as a Government agent. On viewing their testimony as a whole, however, it may well be that they were confused or that their recollections dimmed over time. Martinez specifically expressed her uncertainty.

[8] The employees' subsequent refusal to sign the Union's membership cards supports this conclusion.

[9] The ILGWU did not begin actively campaigning among the employees at the Chicago plant until February 1980. However, based on its recent success in organizing Respondent's Los Angeles employees, a strong suspicion arises that Hollander entered into a hasty alliance with the Industrial Workers anticipating that the ILGWU's courtship of the Chicago employees was imminent.

[10] Osaky's solicitation of Chavez in December, before the contract took effect, was then even more impermissible.

Gutierrez stated initially that the men did not identify themselves, but then recalled that Ellman said he was investigating a complaint filed with the Government. Chavez, on the other hand, testified that Ellman identified himself as Respondent's representative. Given the employees' modest educational attainments and their lack of sophistication about union matters, it is altogether understandable that they had some difficulty grasping Ellman's explanation of his role. Further, it is clear that none of the employees felt that the situation was coercive or that they would suffer reprisals either for participating or withdrawing from the interview. Indeed, six employees declined to be interrogated. Accordingly, Respondent cannot be charged with the commission of unfair labor practices in its conduct of these interviews.

3. Retaliatory warnings

The General Counsel further asserts that the disciplinary notices given on July 22, 1980, to the five employees who testified in the Government's behalf at the preliminary injunction proceeding were unlawful. Respondent contends, in opposition, that the warnings were given because the employees, who knew of their court date in advance, failed to provide adequate notice to the Employer in violation of company policy and thereby left Respondent short-handed during an emergency. Moreover, Respondent points out that the reprimands were withdrawn from the Company's files so that the issue is moot.

The rationale offered by Respondent to legitimize its conduct is farfetched and must be rejected.

First, the notices stated that the violation was for leaving work without permission, not as Oskay later explained, for failure to give prior notice. In fact, Osaky failed to protest when the employees mentioned they had to leave to attend the court session. If he required their assistance to remove material from the flooded plant floor, or if he were offended at their disregard of company policy regarding giving notice, it is difficult to understand why he did not voice his objections immediately. It is equally puzzling why he would release all the women employees, who surely were as capable of removing pillows from the floor as were the men. Moreover, even if Respondent had received notice of the employees' intended absence prior to July 21, Osaky would not have hired substitutes for he could not have predicted that a flood would occur. Further, written reprimands were excessive here where there was no evidence that these employees had poor work records for absenteeism or any other cause. Indeed, Respondent conceded that no written warning for infractions of company rules had been issued to any employee in the past several years.

In these circumstances, only one conclusion is warranted: The warning notices were issued to penalize the employee-witnesses for having testified against Respondent, in violation of Section 8(a)(4) of the Act.

Although Respondent subsequently removed the disciplinary slips from its files, the employees were not advised of this until the hearing in this case. Therefore, the coercive effect of the reprimands continued unabated for an extended period of time. Mere abandonment of unlawful conduct in these circumstances does not moot the matter or undermine the appropriateness of a remedial order to insure against any repetition of that conduct. *Mister Softee of Indiana, Inc., etc.*, 162 NLRB 354 (1966).

REMEDY

As found above, Respondent unlawfully aided and supported the Union in organizing its employees, and unlawfully recognized and entered into a collective-bargaining agreement with the Union at a time when the Union did not represent an uncoerced majority of its employees. By such conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of their right freely to select a bargaining representative and has accorded unlawful assistance to the United Industrial Workers in violation of Section 8(a)(1) and (2) of the Act.

In order to remedy the effect of Respondent's unfair labor practices discussed above, I shall recommend that Respondent cease and desist from such conduct. I shall also recommend that Respondent withdraw and withhold all recognition from the Industrial Workers and cease giving effect to the collective-bargaining agreement executed by them until such time as that Union may have been certified by the Board as the exclusive representative of the employees involved herein.

Further, the Order shall direct Respondent to cease giving effect to the collective-bargaining agreement with the United Industrial Workers dated February 1, 1980, or to any renewal, modification, or extension of such agreement. However, nothing in the Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment which may have been established pursuant to that agreement, except with respect to the agreement's union-security and dues-checkoff provisions which may no longer be enforced. The Order also shall require Respondent to reimburse all present and former employees for all initiation fees, dues, and other moneys which may have been exacted from them by or on behalf of the United Industrial Workers pursuant to the union-security and dues-checkoff provisions of the aforementioned collective-bargaining agreement with interest as called for in *Florida Steel Corporation*, 231 NLRB 651 (1977).

Finally, the recommended Order will require Respondent to cease and desist from permitting the United Industrial Workers from conducting meetings on its premises, unless and until such labor organization is certified by the National Labor Relations Board as the exclusive bargaining representative of its employees, or from issuing written warnings in retaliation for employees testifying as witnesses in any matter arising under the Act.

Because many of Respondent's employees speak and read Spanish as their native language and know little or no English, Respondent will be required to post notices, in both languages, provided to it by the Regional Director for Region 13.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The United Industrial Workers and the ILGWU are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (2) of the Act by assisting, supporting, recognizing, and executing a contract with the United Industrial Workers when at no material time did that Union represent an uncoerced majority of employees in the contract unit.

4. Respondent has violated Section 8(a)(1), (2), and (3) of the Act by maintaining and enforcing union-security and dues-checkoff clauses in accordance with the collective-bargaining agreement unlawfully executed on February 1, 1980.

5. Respondent violated Section 8(a)(1) and (2) of the Act by permitting the United Industrial Workers to meet with employees on company premises and during working hours during which time the Union explained the terms of the new contract and agreed to try to resolve the employees' grievances.

6. Respondent violated Section 8(a)(1) and (4) of the Act by issuing disciplinary notices to five employees in retaliation for testifying at a preliminary injunction hearing in Federal district court.

7. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent has not been shown to have violated the Act in its interviews and interrogation of employees on or about March 25, 1980.

Upon the following findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Hollander Home Fashion Corp., Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting, aiding, supporting, recognizing, or negotiating with Local 1, United Industrial Workers, affiliated with the United Brick & Clay Workers of America, AFL–CIO (herein called the United Industrial Workers), as the exclusive collective-bargaining representative of all production, maintenance, shipping, and receiving employees employed by Respondent at the facility presently located at 4900 West Flourney, Chicago, Illinois (herein called the Chicago facility), unless and until such labor organization is certified by the National Labor Relations Board (herein called the Board) as the exclusive collective-bargaining representative of said employees pursuant to Section 9(c) of the National Labor Relations Act, as amended (herein called the Act).

(b) Maintaining, enforcing, or giving effect to any collective-bargaining agreement with the United Industrial Workers pertaining to employees employed in the unit at the Chicago facility described above, including the agreement which was executed and entered into on February 1, 1980, or any extension, renewal, or modification thereof or any superseding agreement; provided, however, that nothing in this Order shall authorize, allow, or require the withdrawal or elimination of any wage increases or other benefits which may have been established pursuant to such agreement.

(c) Distributing union or dues authorization cards on behalf of the United Industrial Workers to employees in the unit described above.

(d) Promising to grant wage increases to employees in the unit described above who sign union authorization cards for the United Industrial Workers.

(e) Requiring as a condition of employment that all employees in the unit described above who are members of the United Industrial Workers remain members in good standing, or that those employees who are not members on the 30th day following the effective date of the aforesaid collective-bargaining agreement become and remain members of the United Industrial Workers, or that all employees hired on or after the effective date of the aforesaid collective-bargaining agreement become and remain members of the United Industrial Workers on the 30th day following the beginning of such employment.

(f) Requiring as a condition of employment that employees in the unit described above authorize union dues for the United Industrial Workers to be deducted from their wages.

(g) Deducting union dues for the United Industrial Workers from the wages of employees in the unit described above and transmitting such dues to the United Industrial Workers.

(h) Allowing representatives of the United Industrial Workers to conduct grievance meetings with employees during working hours on company premises.

(i) Issuing written reprimands or otherwise discriminating against employees for giving testimony under the Act.

(j) In any like or related manner unlawfully encouraging membership in the United Industrial Workers or any other labor organization, and/or interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, as guaranteed under Section 7 of the Act, as amended.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the United Industrial Workers as the collective-bargaining representative of the employees employed in the unit at the Chicago facility described above, until such time as the United Industrial Workers is certified by the Board as the collective-bargaining representative of said employees.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Reimburse all present and former employees in the unit described above for all initiation fees, dues assessments, or any other moneys which may have been paid in favor of the United Industrial Workers.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to determine the amount of all union dues, initiation fees, assessments or other moneys which have been paid in favor of the United Industrial Workers and are subject to reimbursement to employees under the terms of this Order.

(d) Post at its facility at 4900 West Flourney, Chicago, Illinois, copies of the attached notice marked "Appendix."[12] Copies of said notice, in both Spanish and English,[13] on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the consolidated amended complaint be dismissed insofar as it relates to Respondent's interrogation of employees.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[13] The Regional Director, as part of the compliance process, shall be responsible for having the attached notice translated into Spanish prior to the posting period.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT recognize or negotiate with the United Industrial Workers as the collective-bargaining representative of employees working at 4900 West Flourney, Chicago, Illinois, unless and until that labor organization is certified by the National Labor Relations Board.

WE WILL NOT enter into, enforce, or give effect to any collective-bargaining agreement with the United Industrial Workers at our Chicago facility, including the agreement dated February 1, 1980; provided, that WE WILL NOT withdraw or eliminate any wage increases or other benefits which have been put into effect as the result of any such agreement.

WE WILL NOT encourage membership in the United Industrial Workers by requiring, as a condition of employment, that employees become or remain members of the United Industrial Workers or authorize dues for the United Industrial Workers to be deducted from their wages.

WE WILL NOT deduct union dues for the United Industrial Workers from the wages of employees at our Chicago facility or transmit dues deductions to the United Industrial Workers.

WE WILL NOT distribute union authorization cards or dues authorization cards on behalf of the United Industrial Workers at our Chicago facility or promise wage increases to employees who sign such cards.

WE WILL NOT allow representatives of the United Industrial Workers to come on the premises at our Chicago facility for the purpose of conducting grievance meetings with employees.

WE WILL NOT issue written reprimands or otherwise discriminate against employees for giving testimony under the National Labor Relations Act.

WE WILL NOT assist or contribute support to the United Industrial Workers, or interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

WE WILL withdraw and withhold recognition from the United Industrial Workers as the collective-bargaining representative of employees at our Chicago facility unless and until that labor organization is certified by the National Labor Relations Board.

WE WILL reimburse all employees for any initiation fees, dues, or other moneys deducted from their wages under our contract with the United Industrial Workers, plus interest.

HOLLANDER HOME FASHION CORP.